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CARELESS SPACES ON NEGOTIABLE INSTRUMENTS. — Is there any duty of care whatever as to the issue of negotiable instruments? Does any liability properly rest upon a person who signs a bill, note, or check, which is complete as to date, time, parties, and amount, but is so carelessly made out that a swindler subsequently raises the amount by simply inserting additional words or figures in the open spaces?

The English law on this question has passed by degrees from liability to total absence of liability. The first decision was the well-known *Young* v. *Grote*.[1] The special facts of that case had considerable influence upon the development of the doctrine. Young placed his signature upon some checks which were otherwise blank and left them with his wife to use during his absence. She had her husband's clerk fill out one of these in her presence and sent him to cash it. The clerk had written "Fifty Pounds," as she directed, but intentionally began the words in the middle of the line, leaving a large space to the left, which he filled in when out of her sight, so that the check read, "Three Hundred Fifty Pounds." A similar fraud was carried out as to the marginal figures. The bankers on whom the check was drawn could of course detect nothing wrong, and cashed it for £350. The clerk absconded with the excess. It was held that while a bank which pays a raised check must ordinarily bear the loss,[2] the depositor must here suffer because of the negligence of his agent, the wife.

This decision has been rested on three distinct grounds: First, it is said that negligence does not enter into the case at all, but "that the

[1] 4 Bing. 253 (1827).

[2] Hall *v.* Fuller, 5 B. & C. 750 (1826).

customer had by signing a blank check given authority to any person in whose hands it was to fill up the check in whatever way the blank permitted." [3] This explanation arose out of the special circumstances of the case and is clearly wrong. The authority to fill up the blanks was exhausted when the amount had been written in as the wife directed. A complete check was then in existence. The clerk's subsequent act was not an abuse of authority, but an alteration without any authority at all.[4] Secondly, the case may be rested on the broad ground that one who carelessly signs a negotiable instrument is liable for the injury suffered because of his carelessness by any person who takes the instrument in good faith. There is a general duty of care not to give the opportunity for non-apparent alterations. On this view, the doctrine of *Young* v. *Grote* would extend to bills and notes as well as to checks, and would apply in favor of a *bonâ fide* purchaser of the instrument as well as a bank which paid it. This broad view was definitely rejected by the House of Lords in 1896.[5] A third ground was still left for the case, that although there is no general duty of care as to all negotiable instruments in favor of all takers, there is a special contractual duty owed by a depositor to his bank with respect to checks. By virtue of the banking contract the bank undertakes to honor the depositor's checks on presentation, and in return the depositor undertakes to use ordinary caution to avoid giving facilities for fraud. He is bound not to draw his checks in some unusual way which will make alteration easy and mislead the bank. Such a contractual duty was recognized by the Supreme Court of Victoria,[6] but its decision was reversed by the High Court of Australia [7] and by the Privy Council in 1906,[8] which wholly repudiated *Young* v. *Grote*. This decision was sharply criticized in England,[9] and since the Privy Council does not bind English courts, there was still a possibility that *Young* v. *Grote* might be followed as

[3] Parke, B., in Robarts *v.* Tucker, 16 Q. B. Rep. 560, 580 (1851); but the report may be inaccurate. See 23 L. QUART. REV. 394. Bigham, J., in Union Credit *v.* Mersey, [1899] 2 Q. B. 205, 211 said: "The case, therefore, is just the same as if Young (the plaintiff) had handed the blank cheque direct to his clerk to fill it up for the amount that might be required for wages, and the clerk, in abuse of his authority, had filled the cheque up for double the amount. . . ." See also Pollock, C. B., in Barker *v.* Sterne, 9 Ex. 684, 686 (1854).

[4] In other words, Young *v.* Grote is entirely different from the situation governed by section 20 of the English Bill of Exchange Act and section 14 of the Negotiable Instruments Law. This is clearly pointed out in National Exch. Bank *v.* Lester, 194 N. Y. 461, 464, 87 N. E. 779 (1909).

[5] Scholfield *v.* Londesborough, [1896] A. C. 514. The defendant was an acceptor of a bill of exchange who signed without drawing a line through the blank spaces left by the drawer. The drawer afterwards raised the amount by inserting words, and negotiated to a *bonâ fide* purchaser for value, who was denied recovery. The case might possibly have been decided the same way on the facts, even if there is a duty of care. It was pointed out that a drawee (or indorser) might reasonably hesitate to correct an instrument drawn by some one else. Censorship was perhaps not part of his duty. If so there was no negligence and no liability. The same considerations apply to an indorser. The Societe-General *v.* The Metropolitan Bank, 21 W. R. 335 (1873). The House of Lords, however, instead of finding that there was no breach of duty, denied the duty of care altogether, except possibly between banker and customer.

[6] Marshall *v.* Colonial Bank of Australia, Ltd., 29 Vict. L. R. 804 (1904).

[7] 1 Commonwealth L. R. 632 (1904). [8] [1906] A. C. 559.

[9] Thomas Beven, "Young *v.* Grote," 23 L. QUART. REV. 390 (1907).

between banker and depositor.[10] The case has, however, just received its quietus from the Court of Appeal in *MacMillan* v. *London Joint Stock Bank, Ltd.*[11] Consequently, English law now gives a decisive negative to our opening questions, and recognizes no duty of care whatever as to the execution of negotiable instruments.

Although the doctrine of *Young* v. *Grote* has thus been driven out of the common-law courts of the British Empire,[12] the exile has been welcomed by many American judges. On the broad view of a general duty of care as to all negotiable instruments, the cases recognizing such a duty are very numerous, although there is a slight preponderance of jurisdictions against the duty.[13] The narrow view of a special duty owed by a depositor to his bank as to checks has hardly been discussed. What little authority there is, imposes the obligation on the depositor, even though no general duty of care exists.[14] A strong analogy is found in the analogous decisions which require him to be

[10] It had already been held that there was no duty of care owed to a warehouseman by a bailor in filling out delivery orders. Union Credit Co. *v.* Mersey, [1899] 2 Q. B. 205.

[11] [1917] 2 K. B. 439, affirming [1917] 1 K. B. 363. See Recent Cases, page 798. The drawer might have been held responsible although Young *v.* Grote is not law, on the ground that by issuing a check with no words of amount, he gave his clerk power to fill it up to any amount. B. E. A. § 20; N. I. L. § 14. (The question might of course arise whether the words "holder in due course" would protect a bank which has paid a check so issued and wrongfully filled up.) The court, however, held that there was no such power to fill up the total blank in the space provided for words of amount because the check was already complete, £2. 0. 0. having been written in the space provided for figures before the drawer signed. The court had to admit that Bowen, L. J., had held a bill of exchange incomplete and charged the drawer under similar circumstances. Garrard *v.* Lewis, 10 Q. B. D. 30 (1882). The history of bills and notes shows that marginal figures are no part of the body of the instrument. The American cases are in accord with Garrard *v.* Lewis. Schryver *v.* Hawkes, 22 Ohio St. 308 (1872); Johnston Harvester Co. *v.* McLean, 57 Wis. 258, 15 N. W. 27 (1883); Merritt *v.* Boyden, 191 Ill. 136, 60 N. E. 907 (1901); Prim *v.* Hammel, 134 Ala. 652, 32 So. 1006 (1902). The alteration of marginal figures is not material. Smith *v.* Smith, 1 R. I. 398 (1850); *contra* Moss *v.* Maddux, 108 Tenn. 405, 67 S. W. 855 (1901). The Court of Appeals distinguished Garrard *v.* Lewis, saying that marginal figures are an essential part of a check as commonly used, because of the practice of bankers in case of a discrepancy between figures and words on checks either to pay the smaller amount or refuse payment. While the American cases cited involve either notes or bills, it is very doubtful if our courts would regard marginal figures on checks as distinguishable, especially as the banking practice mentioned seems not to exist in this country.

[12] A duty of care is recognized in Scotland. 23 L. QUART. REV. 403, note; 2 DANIEL NEG. INS. (6 ed.), § 1409.

[13] For liability: Winter *v.* Pool, 104 Ala. 480, 16 So. 543 (1894); Yocum *v.* Smith, 63 Ill. 321 (1872); Hackett *v.* First National Bank, 114 Ky. 193, 70 S. W. 664 (1902); Isnard *v.* Torres, 10 La. Ann. 103 (1855); Humphrey *v.* Herrick, 72 Nebr. 878, 101 N. W. 1016, 102 N. W. 1010 (1904); Garrard *v.* Haddan, 67 Pa. St. 82 (1870).

Against liability: Fordyce *v.* Kosminski, 49 Ark. 40, 3 S. W. 892 (1886); Knoxville *v.* Clark, 51 Iowa, 264, 1 N. W. 491 (1879); Burrows *v.* Klunk, 70 Md. 451, 17 Atl. 378 (1889); Greenfield *v.* Stowell, 123 Mass. 196 (1877); Holmes *v.* Trumper, 22 Mich. 427 (1870); Simmons *v.* Atkinson, 69 Miss. 862 (1892); National Bank *v.* Lester, 194 N. Y. 461, 87 N. E. 779 (1909) reversing 119 App. Div. 786 (1907); Jones *v.* Hardin, 58 Fed. 140 (C. C. A., 8th Circuit, Ark., 1893).

[14] Otis *v.* First National Bank, 163 Cal. 31, 124 Pac. 704 (1912); National Bank *v.* Nolting, 94 Va. 263, 266, 26 S. E. 826 (1897), *semble*; Timbel *v.* Garfield, 121 App. Div. 870, 106 N. Y. Supp. 497 (1907); Trust Co. *v.* Conklin, 65 Misc. 1, 119 N. Y. Supp. 367 (1909), *semble*. — New York denies any general duty of care, see note 13; Land *v.* Northwestern, 196 Pa. St. 230, 234, 46 Atl. 420 (1900), *semble*.

careful in other respects. He has been held responsible if he mails the check to a person of the same name as the payee at another address;[15] if he fails to examine vouchers returned by the bank and discover forgeries;[16] or, if he neglects to notify the bank within a reasonable time after he does discover something wrong.[17] Evidently, the doctrine of *Young* v. *Grote* is still very much alive in the American cases.

The Negotiable Instruments Law apparently leaves the controversy just where it was before.[18] The question ought to be settled one way or the other, and the recent English decision makes the time ripe for a discussion as to what is the proper solution of this problem of negligence.

First, is there a general duty of care as to all negotiable instruments? If so, "the person putting in circulation a bill of exchange does by the law merchant owe a duty to all parties to the bill to take reasonable precautions against the possibility of fraudulent alterations to it."[19] Such a view is only an application of the general principle that a man must use reasonable caution not to cause harm to those who may obviously be injured by his acts. If I set my Ford running through Wall Street without a driver and smash into a limousine, I must pay. Why should I be allowed to turn an unfit note loose in the money market, and deprive an innocent purchaser of his property without any responsibility? All the elements of normal tort liability seem present: A serious injury to a person who did not cause it and could not avoid it; causal connection; culpability according to the standard of reasonable care; absence of justification.

The serious objections to this view fall into three main groups: (*a*) The injury is caused by the intentional act of a third person, while the forms of carelessness for which liability is imposed operate through inanimate nature or animals, or at most through the instinctive or heedless conduct of others. A deliberate act, especially if fraudulent and criminal, breaks the chain of causation, so that the signer's carelessness is not the proximate cause of the injury. The person so intervening "acts as a nonconductor" and "insulates" the negligence. He is the one who is liable to the person injured.[20] Or to put the matter another way, there is no duty to avoid crime and fraud. One need not go through life anticipating dishonesty and scanning every instrument with a detective's eye. We may assume men will act lawfully. The man who carelessly allows his handkerchief to hang out of his pocket can get it back from a *bonâ fide* purchaser from the thief. The protection against forgery is not the vigilance of the parties but the criminal law.

This argument undoubtedly has real strength because it harmonizes with a well-established judicial attitude. As Justice Holmes says, "The general tendency has been to look no further back than the last

[15] Weisberger *v.* Barberton, 84 Ohio St. 21, 95 N. E. 379 (1911); *cf.* Mead *v.* Young, 4 T. R. 28 (1790).

[16] Leather *v.* Morgan, 117 U. S. 96 (1886).

[17] Dana *v.* National Bank, 132 Mass. 156 (1882). By statute, in many states the depositor is required to notify the bank of the forgery within a year after he receives the voucher. It is significant that there is no duty to notify the bank in English law. Kepitigalla *v.* National Bank, [1909] 2 K. B. 1010.

[18] Section 124 is so construed by the N. Y. cases in note 14.

[19] Blackburn, J., in Swan *v.* North British, 2 H. & C. 175, 183 (1863).

[20] FRANCIS WHARTON, TREATISE ON NEGLIGENCE (1874), § 134.

wrongdoer, especially when he has complete and intelligent control of the consequences of the earlier wrongful act."[21] For instance, a landlord who carelessly leaves windows open is not liable for goods stolen from his tenant.[22] The same reluctance to impose liability for carelessness which makes crime easy appears in many other cases.[23]

And yet fraud and crime are facts in this world which can be foreseen and guarded against just like other facts. They are occasional and violent, but so are washouts and the escape of high-tension currents. Under some circumstances intentional unlawful acts are events which the average reasonable man would take care to avoid because of the injury threatened to others clearly within range. The criminal character of these acts then becomes immaterial for purposes of the law of negligence. There is a duty not to cause injury in this way any more than by non-human methods. For example, the owners of an amusement park must exercise reasonable care to protect their colored patrons from race riots.[24] In situations where the defendant's duty to the plaintiff is imposed by contract or statute, so that the difficulty of working out a duty of care is avoided, intervening crime does not break the chain of causation.[25] This is particularly true in the law of bills and notes. Thus if the maker leaves the amount of a note wholly blank and an agent fills it up in violation of instructions, the embezzlement does not prevent a *bonâ fide* purchaser from recovering;[26] so, if a note payable to bearer is stolen and gets into circulation.[27] In these cases the existence of safeguards in the criminal law does not preclude additional civil remedies, any more than the recipient of stolen goods is immune from trover.

As for the handkerchief analogy it is simply a difference of degree. One may not owe a duty to all the possible purchasers of stolen chattels to guard chattels which are ordinarily safe in his own possession, but negotiable instruments which by their very nature are intended to pass beyond his control into a world where fraud is easy, and unfortunately not rare, are a very different matter, and a duty is properly owed by the man who intends his instrument to circulate and be purchased to protect those purchasers in return for the assistance they give his credit. He and not they should suffer by a crime which they cannot detect, but which he by the exercise of reasonable care could have prevented.[28]

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[21] Clifford *v.* Atlantic, 146 Mass. 47, 49, 15 N. E. 84 (1888).

[22] Andrews *v.* Kinsel, 114 Ga. 390, 40 S. E. 300 (1901).

[23] Henderson *v.* Dade, 100 Ga. 568, 28 S. E. 251 (dangerous convict); Carini *v.* Beaven, 219 Mass. 117, 106 N. E. 589 (immoral priest); Hullinger *v.* Worrell, 83 Ill. 220 (prisoner with intent to assault); Cole *v.* German, 124 Fed. 116 (trespasser); Mars *v.* D. & H., 54 Hun (N. Y.) 625 (meddler with untended locomotive).

[24] Indianapolis *v.* Dawson, 31 Ind. App. 605, 68 N. E. 909; see also Lane *v.* Atlantic, 111 Mass. 136 (meddler with untended wagon); Dannenhower *v.* Western Union, 218 Pa. St. 216, 67 Atl. 207 (meddler with live wire); Harrison *v.* Pittsburg, 45 Ohio St. 11, 12 N. E. 451 (theft of dynamite).

[25] Bloom *v.* Franklin, 97 Ind. 478 (insurance, battery); Bondrett *v.* Hentigg, Holt N. P. 149 (insurance, thieves after wreck); Currier *v.* McKee, 99 Me. 364, 59 Atl. 442 (civil damage statute, battery).

[26] Van Duzer *v.* Howe, 21 N. Y. 531 (1860). *Cf.* State *v.* Matthews, 44 Kan. 596, 25 Pac. 36 (1890).

[27] Peacock *v.* Rhodes, Doug. 633 (1781); Miller *v.* Race, 1 Burr. 452 (1758).

[28] For further criticism of the crime objection see Beven in 23 L. QUART. REV. 404–05; EWART ON ESTOPPEL, 48 *ff.*; 2 WIGMORE, CASES ON TORTS, 871.

(*b*) A second objection is, that written instruments are an exception to the general principle of negligence, by the rule of *Derry* v. *Peek*.[29] If directors can issue a prospectus to the world of investors without any duty of care whatever, it would be unfair to hold the unskillful draftsman of a promissory note. To induce the expenditure of money by a writing is not actionable, — physical damage to person or property is necessary. The courts have not discussed the bearing of *Derry* v. *Peek* upon the broad view of *Young* v. *Grote*, but it would seem that the same result as to a duty of care should exist in both situations.

One way out of this difficulty is to say that *Young* v. *Grote* really rests on estoppel and not directly on negligence,[30] bad faith being unnecessary in estoppel as contrasted with deceit.[31] This distinction in the consequences of misrepresentation is certainly anomalous and unsatisfactory,[32] even if we accept the estoppel view.

A better way (estoppel or no estoppel) is to declare *Derry* v. *Peek* wrong. The decision has been severely criticized.[33] One state at least has refused to follow it.[34] Even in England it is showing signs of wear and tear,[35] and the law as to directors was long ago changed by a statute [36] which enacted a legislative principle of liability for negligence analogous to the broader view of *Young* v. *Grote*.

(*c*) Finally, there is the objection of business convenience. There is no limit to the precautions which might have to be taken, as to paper, ink, protectographs, etc.[37] Much negotiable paper is executed by parties who have not in any just sense ordinary business capacity.[38] Drawees and those requested to be accommodation indorsers would have to return instruments unsigned if not safely drawn, and this would complicate commercial transactions, causing delay and controversy. The reply is obvious; only the caution of a reasonable man under the circumstances is required. Drawers and makers cannot object when they issue business instruments if they are obliged to issue them in a business way or take the consequences. As for acceptors and indorsers, what conduct is reasonable? Should they draw lines through the open spaces — an easy operation — or may they reasonably refrain from censorship?[39]

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[29] 14 A. C. 337 (1889).

[30] EWART ON ESTOPPEL, *passim*.

[31] *Ibid.*, 84, 85, 224, 226; Lord Esher in Tomkinson *v.* Balkis, [1891] 2 Q. B. 614, 620.

[32] EWART ON ESTOPPEL, 227 *ff.* Ewart recognizes the artificiality of evading Derry *v.* Peek by estoppel, 236.

[33] Jeremiah Smith, "Liability for Negligent Language," 14 HARV. L. REV. 184; Samuel Williston, "Liability for Honest Misrepresentation," 24 HARV. L. REV. 415; SIR FREDERICK POLLOCK, THE LAW OF FRAUD IN BRITISH INDIA, 46 *ff.*

[34] Cunningham *v.* Pease, 74 N. H. 435, 69 Atl. 120; Conway *v.* Pease, 76 N. H. 319, 82 Atl. 1068.

[35] Nocton *v.* Lord Ashburton [1914] A. C. 932, 945, 951, per Haldane, L. C. Pollock remarks, "Lord Haldane would have liked to get rid of Derry *v.* Peek altogether, if he had been free to do so; and courts not bound by that authority may possibly take occasion to develop his argument more fully than he did himself." 31 L. QUART. REV. 95.

[36] The Directors' Liability Act (1890), 53 & 54 VICT. c. 64.

[37] Halsbury in Scholfield *v.* Londesborough, [1896] A. C. 514, 531.

[38] Knoxville *v.* Clark, 51 Iowa, 264, 273, 1 N. W. 491 (1879).

[39] An acceptor was held liable in Helwege *v.* Hibernia, 28 La. Ann. 520 (1876); not liable in Scholfield *v.* Londesborough, *supra*. An indorser was held liable in Isnard *v.* Torres, 10 La. Ann. 103 (1885); not liable in National Bank *v.* Lester, 194 N. Y. 461, 87

It is a question of fact, no more difficult to decide than the many others that arise in negligence cases. Many of the decisions which dwell on the injustice of liability in the particular case ought to have held that there was no breach of the duty of care, instead of going out of their way to deny altogether the duty which properly exists.

A second problem still confronts us. If a general duty of care exists, the relation of depositor to bank is within its scope, but should jurisdictions which deny the broad ground of *Young* v. *Grote* adopt the narrower ground? There can be no doubt that the depositor owes some duty to his banker not to mislead him.[40] But the English courts deny it is a breach of this duty to afford another person an opportunity to mislead, and talk once more about proximate cause. Why, they ask, is there not a similar duty in all other contracts where duties depend on written communications, *e. g.*, between drawer and acceptor, in non-negotiable warehouse orders, etc.?

In view of the speed with which a bank must honor checks when they are presented at the paying teller's window, it is only right that the depositor should do all in his power to make it safe for the bank to use this speed. A purchaser of a negotiable instrument can take it or not at his option, and has plenty of time to inquire. A bank refuses payment at its peril.[41]

In this special situation some of the difficulties as to the general duty of care are lacking. There is no question, to whom is the duty owed, no need of working out a floating obligation to all possible victims of crime. The analogy of *Derry* v. *Peek* does not apply, for the liability is not necessarily in tort. And the arguments of business convenience strongly favor the liability. Consequently, the narrower ground of *Young* v. *Grote* is even stronger than the broader ground of negligence.

One final aspect of the problem must be set forth. If there is a general duty of care, why is the negligent defendant held in contract? Two answers are possible. We can say that he is estopped because of his negligence to set up the defense of alteration in a suit on the instrument.[42] This view is open to objection, in that there is no actual misrepresentation; and if one says that negligence creates estoppel, is not this really saying that negligence creates the liability?[43] Another explanation is that forms of action are becoming much less important, and that under the declaration in contract upon the instrument the cause of action for negligence may subsequently be established as if the declaration had been amended to meet the defense of alteration.

This difficulty does not arise between bank and depositor, for then the duty arises from a relation and may be considered as contractual, and besides, the bank which sets up the breach is usually defendant, so that the defense of lack of care is allowed without any need for the

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N. E. 779; Worrall *v.* Gheen, 39 Pa. St. 388 (1861). The Pennsylvania case is significant because a general duty exists. In Leas *v.* Wallas, 101 Pa. St. 57 (1882), a maker who left only a small space was held not negligent.

[40] MacMillan *v.* London, etc. [1917] 2 K. B. 450, 458.

[41] Trust Co. *v.* Conklin, 65 Misc. 1, 4, 119 N. Y. Supp. 367 (1909).

[42] EWART ON ESTOPPEL, *passim*, ably supports this view.

[43] Beven rejects estoppel, 23 L. QUART. REV. 391 *ff.*

court to analyze its nature, — whether the plaintiff is estopped; or whether the defendant has a cross-claim, and recovery is denied to avoid circuity of action.

TAXATION OF FOREIGN BANK DEPOSITS AT DOMICILE OF OWNER. — A state may tax all persons subject to its jurisdiction, as well as all property within its borders. It may therefore impose a personal tax upon a person domiciled in the state;[1] and until recently it was generally held that such a tax could be based upon the value of all his movable property, even though it included chattels situated abroad.[2] This power was often rested upon the fiction that movable property is situated at the domicile of the owner, *mobilia sequuntur personam*,[3] but the true nature of the tax, as in reality a personal tax, was well recognized; "the proceeding is personal only."[4] In some states foreign chattels were not included in the tax laid upon a resident, but this was because the court found such to be the legislative will.[5]

While a resident was thus often taxed on the value of his foreign chattels, it is universally agreed that the value of foreign land can never enter into taxation.[6] The immovable nature of land and the impossibility of conceiving of it as "attached to the person," sufficiently justify the distinction in this respect between land and chattels, but the absence of a logical distinction finally influenced the Supreme Court of the United States to hold that a state cannot, in accordance with due process of law, tax its own corporation upon the value of its chattels permanently situated outside the state.[7] It was soon decided that the doctrine of this case does not apply to a chattel having no taxable *situs* elsewhere, like a vessel [8] or a freight car [9] which, though having no *situs* within the owner's domicile, is never permanently enough in any other state to be taxed there; and by the very terms of the decision itself, the doctrine does not apply to intangible property.[10] The ground of distinction between cases where a tax upon the owner could, and where it could not, take into account personal property not situated within the state of his domicile, evidently was that in the one class of cases the property was not findable and taxable elsewhere, and in the other class of cases it could be found and was taxable.

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[1] The Delaware Railroad Tax, 18 Wall. 206.

[2] Bemis *v.* Boston, 14 All. 366; Commonwealth *v.* Pennsylvania Coal Co., 197 Pa. 551.

[3] "Part of his general estate attached to his person." Bradley, J., in Coe *v.* Errol, 116 U. S. 517.

[4] Agnew, J., in McKeen *v.* Northampton, 49 Pa. 519. The opinion proceeds: "Though different kinds of property are specified as the subjects of taxation, it is not as a proceeding *in rem*, but only as affording the means and measure of taxation. The tax is assessed personally."

[5] Hoyt *v.* Commissioners of Taxes, 23 N. Y. 224.

[6] Bittinger's Estate, 129 Pa. 338, 18 Atl. 132.

[7] Union Refrigerator Transit Co. *v.* Kentucky, 199 U. S. 194; Fuller, C. J., and Holmes, J., dissenting.

[8] Southern Pacific Co. *v.* Kentucky, 222 U. S. 63.

[9] New York Central R. R. *v.* Miller, 202 U. S. 584.

[10] "There is an obvious distinction between the tangible and intangible property . . . the latter . . . may be taxed at the domicil of the owner," *per* Brown, J., in Union Transit Co. *v.* Kentucky, 199 U. S. 194, 205.